IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 06.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA
and
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

W.P.No.2204 of 2003

1. The Secretary to Government,
   Co-operation, Food and Consumer
   Protection Department,
   Fort St.George, Chennai 9.

2. The Registrar of Co-operative
   Societies,
   N.V.Natarajan Maaligai,
   Kilpauk, Chennai 10.

3. The Joint Registrar of
   Co-operative Societies,
   Erode Region, Erode 3. .. Petitioners

Versus

1. N.Ponniah,
   Co-operative Sub Registrar
   (Under Suspension)
   No.53, Vaithyanathapuram,
   Thathaneri, Madurai 18.

2. The Registrar,
   Tamil Nadu Administrative Tribunal,
   Chennai 104. .. Respondents

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Writ Petition filed under Article 226 of The Constitution of India to issue a Writ of certiorari to call for the records of the Tribunal, the second respondent herein pertaining to the orders made in O.A.No.1768 of 1999 dated 02.11.2001 and quash the same.

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For petitioners : Mr.M.Dhandapani, Spl.Govt.Pleader

For R1 : Mr.S.M.Subramaniam

O R D E R

(Order of the Court was made by F.M.IBRAHIM KALIFULLA,J.)

The State has come forward with this writ petition challenging the order of the State Administrative Tribunal dated 02.11.2001 passed in O.A.No.1768 of 1999. The first respondent was working as Co-operative Sub Registrar. He was to retire on 30.04.1992. He was not permitted to retire, in view of pending disciplinary proceedings against him. The charge memo itself came to be issued only on 31.03.1998 i.e. after six long years, after the due date of retirement. The occurrence with reference to which the charge memo was issued pertain to the year 1989-1990. Therefore, counted from that year, it took eight long years for the petitioners to issue the charge memo. The allegation was that as a Special Officer of some of the Societies, he committed certain irregularities in the purchase of materials for the Societies. The first respondent filed the Original Application itself only in the year 1999 seeking to quash the charge memo issued against him. The Original Application came to be disposed of only on 02.11.2001 and till that date, no further development had taken place in the disciplinary proceedings initiated against the first respondent. In fact, the first respondent stated before the Tribunal that when he wanted to peruse the records, he was informed by the Department that they were searching for the documents and after tracing the same, they will intimate the first respondent. It was in the above stated circumstances, the Tribunal took a view that when more than ten years had lapsed from the date of the occurrence, it would be wholly inequitable and unjustifiable to allow the petitioners to keep the charge memo alive and thereby hang the democle sword over the head of the first respondent for an indefinite period. The Tribunal after stating that the Hon'ble Supreme Court and High Court have frowned upon such total inaction displayed on the part of the authorities for an indefinite period in proceeding with the disciplinary matters, held that the impugned charge memo cannot be allowed to stand. The Tribunal therefore, set aside the charge memo and directed the petitioners to settle all terminal benefits.

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2. Though Mr.M.Dhandapani, learned Special Government Pleader would attempt to contend that the charges were of serious nature and therefore, the order of the Tribunal should be interfered with, we are unable to countenance such a plea. Apart from what has been observed by the Tribunal, even in the affidavit filed in support of this writ petition, we do not find any anxiety shown in hastening the disciplinary proceedings against the first respondent. In fact, even as on date i.e. July 2007, the fact remains that no progress had been made in respect of the charge memo dated 31.03.1998 issued to the first respondent. The ill effect of all the above factors is that in respect of an incident which happened in the year 1989-1990, the petitioners have displayed supine indifference for the past nearly 17 years, during which period not even the copies of the documents were made available to the first respondent by the petitioners. In spite of such a lethargic attitude displayed by the petitioners, if they were to be permitted to proceed with the charge memo as against the first respondent, we are of the considered opinion that it would result in putting a premium on the total inaction and indifferent attitude displayed by the petitioners in taking disciplinary action against the first respondent. After the due date of retirement of the first respondent, more than 15 years have gone by and that by itself would act as sufficient punishment for the first respondent. In this context, it will be more appropriate to refer to the decision of the Hon'ble Supreme Court reported in *2005(4)CTC 403 [P.V.Mahadevan vs. M.D., Tamil Nadu Housing Board]*, wherein, the Hon'ble Supreme Court, in paragraph No.10, has noted that more than ten years delay involved in initiating the disciplinary proceedings by issuing a charge memo by itself would render the departmental proceedings vitiated. The Hon'ble Supreme Court has laid down the ratio in such cases in paragraph No.14, which reads as under:

> "14. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government official under charges of corruption and dispute integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government

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employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."

3. Applying the above said ratio to the facts of this case, we are convinced that this case also stands on a equal footing, where solely on the ground of delay in the initiation of the disciplinary action the case of the petitioner should fail. We therefore do not find any scope to interfere with the order impugned in the writ petition. The writ petition fails. The petitioners are directed to settle the terminal benefits of the first respondent expeditiously, preferably within two months from the date of receipt of a copy of the order. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

gms

To

1. The Secretary to Government,
   Co-operation, Food and Consumer
   Protection Department,
   Fort St.George, Chennai 9.

2. The Registrar of Co-operative Societies,
   N.V.Natarajan Maaligai,Kilpauk, Chennai 10.

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3. The Joint Registrar of Co-operative Societies,
   Erode Region, Erode 3.

+1cc to Mr.S.M.Subramaniam, Advocate Sr 41233
+1cc to Govt. Pleader Sr 41156

RS (CO)
km/18.7.

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